



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 3380-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████  
██████████, USN, ██████████

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(c) PDUUSD Memo 24 Feb 16 (Carson Memo)  
(d) USD Memo of 25 Aug 17 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 22 September 2023, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although Petitioner was provided an opportunity to submit an AO rebuttal, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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[REDACTED] USN, [REDACTED]

c. The Petitioner enlisted in the U.S. Navy and began a period of active service on 6 June 2002. Petitioner's pre-enlistment physical examination, on 22 May 2002, and self-reported medical history noted no psychiatric and/or neurologic conditions or symptoms. On 28 September 2002, Petitioner reported for duty on board the [REDACTED] in [REDACTED]

d. On 29 July 2003, Petitioner received non-judicial punishment (NJP). There is no record of any NJP appeal in Petitioner's service record. On 2 October 2003, Petitioner received NJP for insubordinate conduct and for assault. Petitioner did not appeal his second NJP.

e. Following his second NJP, Petitioner was notified he was being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. In the interim, on 6 November 2003, Petitioner's medical assessment report indicated he was medically qualified for separation. Ultimately, on 10 November 2003, Petitioner was separated from the Navy for a pattern of misconduct with an under Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code. On 8 February 2007, the Naval Discharge Review Board denied Petitioner's initial application for a discharge upgrade.

f. At the time of Petitioner's separation from the Navy, his overall active duty trait average was approximately 1.5 in "conduct" (military bearing/character) as assigned on his periodic evaluations. Navy regulations in place at the time of his discharge recommended a minimum trait average of 2.5 in conduct/military behavior/military bearing to be eligible and considered for a fully Honorable characterization of service.

g. In short, Petitioner contended that he was suffering from mental health-related issues caused by schizophrenia that manifested itself while he was on active duty. Petitioner argued, in part, that his mental health conditions were a causative factor for the behavior underlying his separation and OTH discharge, and he further argued that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service. Petitioner submitted civilian medical records beginning in 2005 and continuing into 2023 substantiating his schizophrenia diagnosis and treatment.

h. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 11 September 2023. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, he has received treatment for a mental health condition that is temporally close to his military service. It is possible that behaviors demonstrated in service, UA, irritability, insubordination, could be indicators of prodromal symptoms of his later mental health condition. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

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[REDACTED] USN, [REDACTED]

The Ph.D. concluded, “it is my clinical opinion there is post-service evidence of a mental health condition that may have been experienced during military service. There is some post-service evidence to attribute his misconduct to a mental health condition.”

**CONCLUSION:**

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner’s request warrants relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that Petitioner’s mental health condition and experiences mitigated the misconduct used to characterize his discharge. The Board concluded that Petitioner’s mental health-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner’s misconduct. With that being determined, and while not condoning Petitioner’s cumulative misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner’s service as having been under OTH conditions, and that a discharge upgrade to “General (Under Honorable Conditions)” (GEN) is appropriate at this time. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that a discharge upgrade to GEN is warranted.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board determined that an honorable discharge was appropriate only if a Sailor’s service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner’s conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Lastly, the Board did not find a material error or injustice with the Petitioner’s narrative reason for separation or reentry code and was not willing to modify it. The Board concluded the Petitioner was appropriately processed for pattern of misconduct and assigned the correct reentry code based on the totality of his circumstances. Ultimately, the Board concluded that any injustice in Petitioner’s record is adequately addressed by the recommended corrective action.

**RECOMMENDATION:**

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner’s character of service be changed to “General (Under Honorable Conditions).”

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Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

9/25/2023

